***United States Court of Appeals***

***for the***

***District of Columbia Circuit***


# TRANSCRIPT OF RECORD

917

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20, 949

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FRANCIS W. FRIEND,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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## STATEMENT OF QUESTIONS PRESENTED

In the opinion of the Appellant, the following questions are presented by the circumstances of a situation (a) where a trial court revokes a conditional release of a person judicially admitted to a public hospital for the mentally ill after having been acquitted for an offense by reason of insanity, (b) where the court which orders such revocation finds only that such person violated a condition of such release, (c) where the court refrains from resolving conflicting evidence relating to the issue whether such person, if released, would be dangerous to himself or others, and (d) where the court fails to find specially that such person, if released, would be such a potential danger:

1. Whether the court erred in revoking such conditional release only because such person violated a term thereof.

2. Whether the court erred in ordering such revocation in the absence of a finding that

such person, if released, would be dangerous, as aforesaid.

3. Whether the court erred in ordering such a revocation without finding the facts specially on the issue of such potential danger and without stating separately its conclusions of law.

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Brief for Appellant

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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## JURISDICTIONAL STATEMENT

The Appellant was admitted to Saint Elizabeths Hospital in 1954 and on October 31, 1966 the United States District Court entered an order amending an order of conditional release entered on August 12, 1966. On February 17, 1967, following a hearing, the District Court entered an order revoking the order of October 31, 1966. Thereafter, Appellant filed an application for allowance, in forma pauperis, to appeal

to this Court. The District Court granted the application on March 23, 1967. The jurisdiction of this Court is asserted under 28 U.S.C. §1291.

## STATEMENT OF THE CASE

Appellant was admitted to Saint Elizabeths Hospital originally in 1954 and was readmitted on November 21, 1957, after having been found not guilty by reasons of insanity on charges of robbery and assult with a dangerous weapon. (Letter dated December 11, 1964 by Hospital to Clerk of District Court in Original Record) During much, if not most, of the period November 21, 1957 to February 17, 1967, Appellant was granted liberties outside the grounds of Saint Elizabeths, pursuant to conditional releases granted him by the District Court. Appellant was on conditional release from March 1963 until February 22, 1965 and from February 10, 1966 until February 17, 1967. While on such conditional release status through November 10, 1966 Appellant had always voluntarily returned to the Hospital (Tr. 46) except when he left without permission in December 1964 and was apprehended

and returned to the hospital in February 1965. (Letter dated February 25, 1965 from Hospital to Clerk of District Court in Original Record) During all the time Appellant was absent from the Hospital on conditional release he did not commit any offense and was not arrested. (Tr. 46,51)

The conditional release which the court granted him on March 15, 1963, on the recommendation of Saint Elizabeths, permitted him to work and live "in the city." (Letter dated July 26, 1966 by Hospital to Clerk of District Court in Original Record. Tr. 52) In July 1966 Appellant desired to move to Camp Springs, Maryland and to work either in the Camp Springs or Laurel, Maryland area. The Hospital recommended to the court this extension of his release. (Letter dated July 22, 1966 by Hospital to Clerk of District Court in Original Record) During the hearing before the court a staff psychiatrist testified that Appellant had recovered sufficiently from his mental illness and that he would not in the reasonable future be dangerous to

himself or others. The court accordingly extended the release of appellant on the conditions that (a) he keep the Hospital advised of his employment and living address, (b) he return to the Hospital for regular psychiatric interview and supervision, and (c) he remain on the Hospital rolls and under the supervision of the Hospital until it could certify that he had recovered from his mental illness. (Order of District Court entered August 12, 1966 in Original Record)

On August 19, 1966, while living away from the Hospital on this release, Appellant was involved in an episode about which (a) the evidence is conflicting and (b) the trial court made no finding of fact or conclusion of law. In a letter dated August 22, 1966 and addressed to the United States Attorney the Superintendent of the Hospital gave his version as follows:

> Following his conditional release, Mr. Friend phoned the Hospital on August 19, 1966, stating that he had been shot and was bleeding profusely. At this time a Hospital ambulance was dispatched and on arrival at his home he threatened the Hospital personnel

> with a knife and refused to return to the Hospital voluntarily. The Prince Georges County Police were then notified and upon their arrival Mr. Friend voluntarily returned to the Hospital. Physical examination indicated that he had not suffered any gunshot wound but did have a small laceration on the left wrist which he said was self-inflicted. He was intoxicated at the time and admitted having been drinking excessively for the past four to five days.
>
> Because of the foregoing incidents and his present mental condition, it is therefore requested that your office initiate proceedings to revoke Mr. Friend's conditional release. We would appreciate your cooperation in this matter.

Pursuant to this letter the United States Attorney moved to revoke Appellant's conditional release of August 12, 1960. He asserted (a) that since this date Appellant had demonstrated a proclivity for violence insofar as he threatened to use a knife on personnel, (b) did, in fact, wound himself, (c) in other ways he had refused to continue under the supervision of the Hospital, and (d) the Hospital did not consider him any longer to be sufficiently recovered from his particular illness to warrant even a conditional release. (Letter of August 22, 1960 and Motion of August 29, 1960 in Original Record)

This motion was heard by the District Court on October 28, 1966, and this letter was read to the Court. (Tr. 49) The Hospital personnel, however, whom Appellant was alleged to have threatened with a knife, did not testify. (Tr. 48 49) Appellant had informed his lawyer that he had not threatened Hospital personnel with a knife but his counsel did not call any witnesses at this hearing. (Tr. 48 49) The court denied the Government's motion to revoke the conditional release but found, without specifying the details or facts, that Appellant had violated certain terms of the order of conditional release entered on August 12, 196. . The Court, however, further found that the evidence adduced at the hearing did not justify or warrant a revocation of the said conditional release but the Court did find that the release should be amended, inter alia, so as to require that Appellant should (a) live on the grounds of the Hospital, (b) be permitted to leave the grounds for employment elsewhere, (c) return to the Hospital each day after work, and (d) remain on the hospital grounds on weekends when he was not employed. (Order in Original Record)

Appellant reacted unfavorably to both the hearing of October 28, 1966 and the order of October 31, 1966 amending the terms of the conditional release of August 22, 1966. (Letter dated October 28, 1966 by Appellant addressed to Judge Gasch in Original Record) He considered them to be unfair (Tr. 45-46, 51) because he had consistently denied that he had threatened any person with a knife and insisted that all persons with knowledge of the alleged episode should testify in open court as to what in fact did occur. (Tr. 47-49) Appellant did agree with the Hospital staff that he was quite drunk when he returned to the Hospital on August 19, 1966. Appellant's displeasure was further increased because the one-sided version of the episode was noted on the Hospital records and divulged to some prospective employers with the result that his efforts to obtain employment were defeated or impaired. (Tr. 45) The net result on Appellant's state of mind was a feeling of disgust which impelled him to take unauthorized leave during the period November 11-15, 1966 as well as on December 26, 1966, January 1 and January 10, 1967. (Tr. 46) Appellant

knew that in thus absenting himself from the Hospital grounds he was disobeying the court's order of October 31, 1966. (Tr. 45)

On February 17, 1967 the District Court conducted a hearing on a motion by the Government to revoke the order of conditional release of August 12, 1966 as amended by the order of October 31, 1966. The Government contended (a) that the sole basis for such requested revocation was Appellant's four aforesaid violations, in terms of unauthorized absence from the Hospital, of the October 31, 1966 order and (b) that the facts of the August 19, 1966 episode were irrelevant to the pending motion. (Tr. 12-13, 22) The trial court expressed agreement with both positions of the Government (Tr. 16-17, 19-22, 40)

The two psychiatrists on the Hospital staff who testified agreed on some matters and disagreed on others. (Tr. 23, 32) In November 1966 Appellant was transferred to the Hospital service of which Dr. Robert Robertson was in charge and the latter had been responsible for Appellant until February 17, 1967.

Dr. David J. Owens examined Appellant August 19, 1966 but except for this one occasion Dr. Owens had not examined or interviewed Appellant during the period of at least five years prior to the hearing on February 17, 1967 (Tr. 33,50) Dr. Robertson and Dr. Owens agreed in essence that Appellant was suffering from certain mental illness and they also agreed that if Appellant were released he would be potentially dangerous to himself and to others. (Tr. 25, 30-31, 34,42) Over objection of Appellant counsel, the court permitted them to base their opinions as to potential danger, in part, on the alleged August 19, 1966 incident, at which neither Dr. Robertson nor Dr. Owens, was present, wherein Appellant is alleged to have threatened two Hospital attendants with a knife. (Tr. 25,35,40) As to (a) the revocation of Appellant's conditional release and (b) Appellant's discharge from the Hospital Dr. Robertson and Dr. Owens disagreed. In the many years Appellant had been a patient of Saint Elizabeths he had had considerable contact with the physicians on the staff, had been under individual therapy and had had the maximum hospital benefits during

his thirteen years at the institution, and further hospitalization could have been of no further benefit to him. (Tr. 28,31) Dr. Robertson did not consider Appellant's unauthorized absence during the period November 11-15, 1966 as a basis for revocation. (Tr. 26) On the contrary, he recommended against a revocation of Appellant's conditional release and in favor of Appellant's "unconditional release and discharge". (Tr. 29) Dr. Owen disagreed and recommended the revocation of the existing conditional release. (Tr. 42-43)

Appellant's testimony conflicted with that of the two psychiatrists in relation to (a) his having threatened Hospital personnel with a knife on August 19, 1966 (Tr. 47) and (b) his being a potential danger to himself or to others. (Tr. 46-49, 51) He categorically denied the alleged threat and the potential danger. He knowingly violated the October 31, 1966 order by his four elopements from the Hospital because of disgust over the October 28, 1966 hearing which resulted in a narrowing of his liberty under the August 12, 1966 conditional release. (Tr. 45-46, 48-49,51)

Following the hearing described above, the District Court found that Appellant had failed to comply with the terms of the conditional release as amended and the court thereupon ordered that Appellant's conditional release be revoked and that Appellant be recommitted to Saint Elizabeths Hospital for further treatment and care pursuant to Title 24, Section 301(d) of the District of Columbia Code. The court did not make any finding as to (a) whether Appellant had threatened any person with a knife, (b) whether he was mentally ill, (c) whether in the reasonable future he would be dangerous to himself or others, and (d) whether the Hospital could give Appellant any psychiatric treatment for his mental condition. Moreover, the court did not state its conclustions of law.

## STATEMENT OF POINTS

1. The trial court erred in holding that a violation of a conditional release, standing alone, with nothing more, is a sufficient basis for revoking such release granted to a person admitted to a hospital for the mentally ill after he was acquitted of an

offense by reason of insanity.

2. The trial court erred in revoking such a conditional release without considering whether the person granted such release would be a danger to himself or others unless his release was revoked.

3. The trial court erred in ordering the revocation of the conditional release of such person (a) without finding the facts specially on the matter of the effect of the Appellant's continued release in terms of danger to himself or the others and (b) without stating separately its conclusions of law.

## SUMMARY OF ARGUMENT

Release of a person who has been committed to a mental hospital after acquittal by reason of insanity is governed by §24-301(e) of the District of Columbia Code. The statute provides for both unconditional and conditional release, respectively, and provides for the same procedural hearing by a court. However, the statute is less specific for conditional release. The court is not required, as it must for an unconditional release, to find that

"such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others". The court is required only to "find that the condition of such person warrants his conditional release...." whereupon the court shall order the release "under such conditions as the court shall see fit...." The basic policy of this statute is to provide treatment and cure for the patient in a manner which affords reasonable assurance for the public safety in terms of an absence of danger to such person or others in the reasonable future.

The statute is silent on the matter of the revocation of a conditional release. Since its focal point is the non-dangerous conduct of a patient who has had a partial recovery of his sanity, the mere violation of the terms of a conditional release which the court has granted him is, by itself, without more, insufficient to characterize his behavior as dangerous. It could be only a single and momentary trivial infraction of a minor provision of the release. As such it is beyond the scope of revocation which the statute might contemplate.

It follows, therefore, that an elopement from the mental hospital in violation of the terms of a conditional release is not a per se basis for a revocation. Before a court can revoke a conditional release it must find that the person so released will, as a result of mental illness, be a danger to himself or others in the reasonable future. Unless the evidence warrants such a finding and unless the trial judge, pursuant to the rules of procedure, makes special findings to this effect and states his conclusions of law, his order of revocation fails to meet the substantive and procedural requirements of the law and on review, the order of revocation should be reversed.

## ARGUMENT

I. The trial court erred in holding that a violation of a conditional release, standing alone with nothing more, is a sufficient basis for revoking such a release granted to a person admitted to a hospital for the mentally ill after he was acquitted of an offense by reason of insanity.

Chapter 3 of Title 24 of the District of Columbia Code, (§24-301) relates, in part, to the conditions for release of persons acquitted of offenses by reason of insanity and committed to a mental hospital.

In a series of cases construing this statute, this Court has held that the principal concern of this enactment providing for unconditional release by order of court is for procedures to protect the public from the premature release of dangerous persons. Green v. United States, 121 U.S. App. D.C. 226, 349 F. 2d 203(1965). In Overholser v. Leach, 103 U.S. App. D.C. 289, 291-292, 257 F. 2d 667, 669-670(1958) this Court expounded the test of this statute in terms as follows:

> There must be freedom from abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future.

To the same effect is Overholser v. O'Beirne, 112 U.S. App. D.C. 267, 302 F. 2d 852(1962) and cases cited.

That portion of the statute relating to conditional release is silent with reference to any standard of non-dangerous behavior on the part of a patient released conditionally from a mental hospital. All that the statute says is that the court shall "find that the condition of such person

warrants his conditional release...", and, if so, the court shall order his release "under such conditions as the court shall see fit...." This Court has concluded that the basic policy of the statute is to provide such therapy for the partially recovered patient as will reasonably assure public safety. The statute therefore, in terms of its purpose and despite its silence, functionally empowers the court to withhold a conditional release from a person who would endanger himself or others in the reasonable future. Hough v. United States, 106 U.S. App. D.C. 192, 271 F. 2d 458 (1959).

In view of the standards developed by this Court in construing the statute, a court may not revoke a conditional release merely because of a violation thereof. An infraction of a regulation included in such a release might be trivial, infrequent and harmless. If a patient who is working outside the Hospital during the day pursuent to authorized leave fails to return to the grounds for one evening, we could not say to a certainty, if at all, that such elopement was by itself a sufficient ground under the statute to warrant

a revocation of a conditional release. Such an episode might not to any extent indicate that the patient was so mentally ill and so potentially dangerous that he should be confined full time to the limits of the Hospital grounds for an undetermined and indefinite period. And Dr. Robertson, the psychiatrist at Saint Elizabeths who had known Appellant for over four years and who had been in charge of the service to which Appellant was assigned, testified to the same effect. He told the court that he not only did not consider Appellant's elopement during the period November 11 - 15, 1966 a basis for revocation but he recommended against it. It follows that the mere violation of a conditional release is not per se a legal basis for revocation of a conditional release.

II. The trial court erred in revoking such a conditional release without considering whether the person granted such release would be a danger to himself or others unless his release was revoked.

The opinions of this Court make clear that a trial judge hearing a case involving a conditional or unconditional release pursuant to §24-301(e) must

deal with the questions discussed above and make findings accordingly. "The part of the court in the release procedure is not pro forma or merely technical; it is the performance of judicial acts, depending solely upon the evidence and the judicial judgment of the court." Isaac v. United States, 109 U.S. App. D.C. 34, 38, 284 F. 2d 168, 172 (1960). See also Darnell v. Cameron, 121 U.S. App. D.C. 58, 60, 348 F. 2d 64, 66 (1965). And the court's determination on the issue of release is reviewable on appeal. Green v. United States, 121 U.S. App. D.C. 226, 349 F. 2d 203 (1965). Hence the reviewing court should be able to discern from either the trial judge's oral opinion or his findings of fact and conclusions of law his factual and legal basis for revocation. Only in this way can this Court ascertain whether the District Court's findings conform to the standards of §24-301 as construed by this Court. Hough v. United States, 106 U.S. App. D.C. 192, 195, 271 F. 2d 458, 461 (1959); Overholser v. O'Beirne, 112 U.S. App. D.C. 267, 270, 302 F. 2d 856 (1962).

In view of the foregoing the trial judge should have determined specifically whether Appellant's continued conditional release would have resulted in a danger to himself or others, even though Appellant was guilty of four unauthorized absences. The mere fact that he might have had some dangerous propensities, which the judge, however, did not find, did not, standing alone, warrant revocation of his conditional release and resumption of his full-time confinement in a government mental institution under §24-301 D.C. Code. Overholser v. O'Beirne, 112 U.S. App. D.C. 267, 269, 302 F. 2d 852, 854 (1962).

III. The trial court erred in ordering the revocation of the conditional release of such person (a) without finding the facts specially on the matter of the effect of the Appellant's continued release in terms of danger to himself or to others and (b) without separately stating its conclusions of law.

Rule 52(a) of the Federal Rules of Civil Procedure in part provides:

> In all actions tried upon the facts without a jury..., the court shall find the facts specially and state separately its conclusions of law thereon.... Requests for finding are not necessary for purposes of review. ...

> If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusion of law appear therein. ....

The purpose of findings of fact and conclusions of law is (a) to aid the trial court in making a correct factual decision and a reasoned application of the law to the facts, (b) to define for purpose of res adjudicata and estoppel by judgment the issues then adjudicated and (c) to aid the appellate court. 5 Moore's Federal Practice 2632. The court in United States v. Forness, 125 F. 2d 928, 942-943 (C.C.A2, 1942) cert. den. 316 U.S. 694 (1942) ably discussed the aforesaid nature and purpose of findings and the duty of the trial judge to make them with care.

The order of revocation fails to meet the requirements of Rule 52(a). The trial court failed to make findings on the material issues of mental illness or potential danger, as heretofore discussed. Moreover, the court neglected to find specially the character of Appellant's violation of a term of his conditional release in relation to its legal con-

sequence. And the court should have resolved the conflicting testimony of the staff psychiatrists as to whether Appellant's conditional release should be revoked. This point is particularly cogent in view of the psychiatric testimony that the Hospital cannot render any further effective treatment to Appellant. This Court has expressed grave concern over this problem. In Darnell v. Cameron, 121 U.S. App. D.C. 58, 67-68, 348 F. 2d 64 67-68 (1965), the Court used the following language which applies with equal force to the case of Appellant, who has been a patient of Saint Elizabeths for thirteen years:

> The hospital introduced no evidence to show what treatment, if any, appellant was receiving. And the court made no findings of fact or conclusions of law on this question. ... We are constrained to note this question here because the District Court did not recognize that the alleged absence of treatment might draw into question "the constitutionality of the mandatory commitment section" as applied to appellant.

Appellant's liberty was at stake in the hearing on the motion to revoke. The situation, to a limited extent, was similar to a motion to revoke an order of probation or parole in a criminal case. Surely,

the gravity of the violation of a conditional release, probation or parole is a substantial factor in terms of effect on the person involved. This Court cannot know from the brief order of the trial court whether the revocation was justified by the operative facts and legal doctrines controlling in the hearing. This Court should therefore vacate the order and remand the action for appropriate findings to be made. Mayo v. Lakeland Highland Canning Co. 309 U.S. 310, 316 (1940); Rainey v. Rainey, 76 U.S. App. D.C. 341, 131 F. 2d 349 (1942); National Savings and Trust Co. v. Shutack, 78 U.S. App. D.C. 232, 139 F. 2d 371 (1943) and cases cited therein.

## CONCLUSION

For the reasons stated, the order of revocation of conditional release should be reversed and the case remanded so that the trial court will find the facts specially and state separately its conclusions of law thereon.

Respectfully submitted,

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BRIEF FOR APPELLEE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 20,949**

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FRANCIS W. FRIEND, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

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**Appeal from the United States District Court for the District of Columbia**

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DAVID G. BRESS,
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Cr. No. 288-54

## QUESTIONS PRESENTED

In the opinion of appellee, the following questions are presented:

1) Did appellant's substantial violation of the supervisory conditions of his conditional release from Saint Elizabeths Hospital constitute a sufficient basis on which to revoke that release?

2) Does the record disclose evidence of appellant's dangerousness to himself and to the community even while under conditional release sufficient to provide further support for the lower court's decision to revoke that release? If so, was an extensive statement of such finding required of the lower court?

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## TABLE OF CASES



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*Cases chiefly relied upon are marked by asterisks.

## OTHER REFERENCES

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FRANCIS W. FRIEND, APPELLANT

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UNITED STATES OF AMERICA, APPELLEE

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**Appeal from the United States District Court for the District of Columbia**

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## BRIEF FOR APPELLEE

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## COUNTERSTATEMENT OF THE CASE

### Background

On March 15, 1954 appellant was indicted for robbery and assault with a dangerous weapon in violation of 22 D.C. Code § 2901 and § 502. On May 18, appellant moved for a competency hearing, granted by the court on May 25. On July 1, upon substantial evidence from qualified psychiatrists that appellant was of unsound mind suffering from an undifferentiated psychosis, the court found him mentally incompetent to stand trial and committed him to Saint Elizabeths Hospital where he remained for

three years. On October 17, 1957, appellant was declared competent to stand trial and proceedings against him were recommenced.

At trial before District Court Judge Henry A. Schweinhaut on November 21, 1957, evidence disclosed that appellant entered the home of the complaining witness unlawfully, threatened the persons residing there with a loaded pistol and took property from the person of the complaining witness under threat of force. On evidence of appellant's psychotic condition at the time of the offense, the court found appellant not guilty by reason of insanity and pursuant to 24 D.C. Code § 301(d) committed appellant to Saint Elizabeths Hospital.

Pursuant to the rehabilitative scheme envisioned in 24 D.C. Code § 301(e), appellant's conditional release was recommended by the superintendent of Saint Elizabeths to the court in August of 1958. Before action was taken, appellant eloped to Jacksonville, Florida where he was apprehended pursuant to a bench warrant issued March 13, 1959, and returned to Saint Elizabeths. Appellant's first conditional release was eventually granted by the court on April 25, 1960. He was to live and work in the District of Columbia on condition that he report to the hospital at stated intervals and that he keep the hospital aware of his general readjustment. Several weeks later appellant returned to the hospital in an intoxicated condition, broke several windows injuring himself and later involved himself in a fracas with another patient. On July 22, 1960 appellant consented to a revocation of this first conditional release.

In the succeeding years appellant was granted several more conditional releases. He violated his second conditional release of September 19, 1961, by eloping to Florida; his failure to keep the hospital informed as to his adjustment and the impossibility of supervision created by the elopement resulted in revocation of this conditional release in May of 1962. On March 15, 1963 appellant was granted his third conditional release, again on substantially the same conditions of supervision and

adjustment as the first two. However, a subsequent elopement and continued episodes of intoxication served as the basis on which the court in November of 1964 revoked this third conditional release.

On August 12, 1966, appellant was again conditionally released. It is the circumstances surrounding the revocation of this fourth conditional release that appellant now challenges. By the terms of his release, appellant was allowed to work and live in Camp Springs, Maryland on condition that he keep the hospital advised of his status and return for regular psychiatric interviews. On August 29, 1966 the Government moved to revoke the release on the basis of reported incidents of assaultiveness and intoxication occurring on August 19, one week after the release had been granted. At a hearing on October 28, 1966,[1] Judge Oliver Gasch denied the Government's motion to revoke, but amended the original release order to require that appellant spend his non-working hours at Saint Elizabeths Hospital, a more strictly regulated environment. Following four elopements in the next two months, the Government again moved for revocation.

**The Hearing**

On February 17, 1966 a hearing was held before District Court Judge William B. Bryant.[2] It was undisputed that on November 11 and December 28, 1966 and on

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[1] Appellant was present and represented by competent and experienced counsel at this hearing. He had the right to call witnesses in his behalf and to cross-examine those witnesses called by the Government. That court strictly observed the procedural requirements set forth in *Darnell* v. *Cameron*, 121 U.S. App. D.C. 58, 348 F.2d 64 (1965). We do not understand appellant to argue otherwise.

[2] Judge Bryant refused to reopen the issue of whether or not appellant had in fact been involved in acts of violence on the night of August 19, 1966, viewing that issue as procedurally foreclosed by Judge Gasch's hearing and order of October 28, 1966. Judge Bryant limited the testimony of medical experts to their personal observations of appellant on which they based their opinions as to dangerousness. (Tr. 16-20, 35-37, 40)

January 1 and January 10, 1967, appellant failed to return to Saint Elizabeths after completing work, in violation of the terms of his amended conditional release on October 28, 1966. Dr. Robertson so testified as did appellant. (Tr. 24, 27, 45, 46)[3] Appellant's November 11 elopement lasted four days (Tr. 26).

The Government adduced substantial evidence that appellant still suffered from a mental disease as a result of which he was potentially dangerous to himself and to the community if allowed to continue on conditional release. Dr. Robertson of Saint Elizabeths testified that appellant suffered from a sociopathic personality disturbance and also from alcoholism. He stated that appellant was potentially dangerous in view of his past history of assaultiveness.[4] (Tr. 23, 24, 25, 30) Dr. David J. Owens, Clinical Director of the Maximum Security Unit of Saint Elizabeths was also called by the Government. He testified that despite intensive treatment including individual psychotherapy (Tr. 43), appellant still suffered from a mental illness, sometimes psychoneurotic and sometimes

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[3] "Tr." refers to the transcript of the revocation hearing before Judge Bryant on February 17, 1967 in Criminal Case No. 288-54.

[4] In claiming that Dr. Robertson recommended appellant's unconditional release, appellant misrepresents the thrust of those remarks. Dr. Robertson clearly stated that in his opinion appellant was dangerous and that he had violated his conditional release order (Tr. 25, 28, 30). His recommendation that appellant be released in spite of these factors was in no way based on the demands of the statutory scheme (Tr. 29-31), but rather was based on his own predilection as to the value of continued treatment. Judge Bryant correctly noted (Tr. 31) that to release a potentially dangerous mentally ill person unconditionally because despite extensive treatment the patient's further improvement was questionable would be violative of the statutory requirements for conditional release with complete disregard for the public safety. *Overholser* v. *O'Beirne*, 112 U.S. App. D.C. 267, 302 F.2d 852 (1961); *Ragsdale* v. *Overholser*, 108 U.S. App. D.C. 308, 281 F.2d 943 (1960). Recently, the District of Columbia Court of Appeals reversed a decision which granted an unconditional release on a motion to revoke conditional release for much the same reasons Judge Bryant rejected Dr. Robertson's position. *United States* v. *Morris Charnizon*, Nos. 4273-74, D.C. Ct. App. August 22, 1967.

sociopathic in nature, and that in appellant's present condition, he was a potential danger to himself and to others (Tr. 34). Dr. Owens stated that upon revocation of conditional release appellant would continue to receive intensive treatment, and indicated that further treatment might well enable appellant to readjust to the pressures of the community under minimal supervision (Tr. 43). Dr. Owen's opinion, however, was that at present appellant should not be out of touch with authority and that appellant "just can't make it in the community on any type of release at this time" (Tr. 39).

Appellant took the stand in his own behalf. He admitted knowingly violating the terms of his amended conditional release, claiming that his elopements were caused by a sense of frustration over the alleged inequities he felt he had suffered at the October 28 hearing. Appellant admitted being intoxicated on the night of August 19, 1966, when he cut his wrist and called Dr. Owens telling him he was bleeding to death. (Tr. 45, 46, 47, 54-55)

Faced with substantial evidence of appellant's dangerousness to himself and to the community because of his abnormal mental condition, and faced with appellant's continued failure to abide by the supervisory conditions imposed by court on August 12, 1966 and amended on October 28, 1966, the court by order of February 17, 1967 revoked appellant's conditional release from Saint Elizabeths Hospital.

This appeal followed.

## STATUTES INVOLVED

24 D.C. Code § 301(d) provides:

> If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.

24 D.C. Code § 301(e) provides in pertinent part:

> Where, in the judgement of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in such a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit . . .

## SUMMARY OF ARGUMENT

### I

A substantial violation of the conditions of a Section 301(e) conditional release constitutes a sufficient basis on which a court may revoke that release. The lack of adequate control and supervision inherently resulting from a substantial failure to abide by court imposed constraints of necessity gives rise to the conclusion that under the resulting circumstances the patient is dangerous to himself and to the community.

Conceived in a period of concern for public safety, the justification for the Section 301(e) release of patients who have not yet recovered their sanity and are still dangerous to themselves and others was found in the degree to which strict control of their actions would be imposed by the court and enforced by the hospital. This Court has often noted the importance of those conditions and in the *Darnell* case clearly inferred that their violation would be sufficient in and of itself to support revocation. Indeed, the logic of the statutory scheme requires the inference that where a mentally ill person so released substantially violates conditions set up solely and precisely to protect him and the community from harm, he has become a danger to himself and to the community such that a court is authorized to revoke his conditional release.

Faced with appellant's repeated failure to abide by the conditions of his release and his repeated failure to make himself available to the supervisory control both the hospital and the court thought so vital, the court below properly revoked his conditional release.

II

The record discloses ample evidence of appellant's dangerousness while on conditional release, and further supports the lower court's decision to revoke that release. There was complete unanimity among medical experts that appellant was presently dangerous as a result of his mental disorder and that he had failed to abide by the conditions designed to make safe his presence in the community. Appellant himself testified that he had cut his wrist while intoxicated.

The lower court clearly considered appellant's dangerousness while on conditional release as a basis for revocation of that release. In making its determination to revoke, the lower court was not required to make explicit its finding of dangerousness. Such finding that appellant violated the conditions of his conditional release of necessity involved the conclusion that he was a danger to himself and to the community. In any event, it has never been the case that extensive findings are required of the court in making Section 301(e) determinations.

The record of the instant case, as well as the lower court's findings in its order, amply support its decision to revoke appellant's conditional release.

## ARGUMENT

### I. Appellant's manifest failure to abide by the conditions of his conditional release was a sufficient basis for the court below to revoke that release.

(Tr. 25, 27, 28, 30, 34)

24 D.C. Code § 301(e) in part governs the grant of conditional release to an individual committed to a mental

institution after an acquittal by reason of insanity.[5] "To order a conditional release . . . the court must conclude that the individual has recovered sufficiently so that under the proposed conditions or under conditions that the statute impowers the court to impose 'as it shall see fit'—'such person will not in the reasonable future be dangerous to himself or others' ". *Hough* v. *United States*, 106 U.S. App. D.C. 192, 195, 271 F.2d 458, 461 (1959).

Section 301(e), however, is silent on the circumstances under which a court may revoke a conditional release granted under this section. Appellant contends that his substantial violation of the conditions of his amended conditional release of October 28, 1966, through four elopements from Saint Elizabeths Hospital in the space of two months, was an insufficient basis on which to revoke that release.[6] He further claims that a separate finding of dangerousness is a necessary prerequisite to revocation and recommitment.

Appellant's position misconceives the purpose and rationale of the Section 301(e) conditional release, as disclosed by its legislative development, its subsequent construction by this Court and the internal logic of its commands. Together these sources indicate clearly that a substantial violation of the conditions of a Section 301(e) conditional release constitutes a legally sufficient

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[5] Section 301(e) provides in pertinent part: "Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in such a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit. . ."

[6] It is interesting that appellant hypothesizes "trivial, infrequent and harmless" violations of a conditional release order in making his argument (Br. at 16). Four elopements within two months, three of which coming within a two week period, are not, however, "infrequent". Similarly, given appellant's mental illness with its concommitant proclivities for assaultive behavior, such violations are neither "trivial", nor "harmless".

basis on which a court may revoke that release. Further, the lack of adequate control and supervision inherently resulting from a substantial failure to abide by court imposed constraints, of necessity gives rise to the conclusion that under the resulting circumstances, the patient is dangerous to himself and to the community.

The statutory development of Section 301(e) discloses an effort to create stringent standards under which conditional release is to be affected. At the time of the decision in *Durham* v. *United States*, 94 U.S. App. D.C. 228, 214 F.2d 862 (1954) (hereinafter referred to as Durham I), it was discretionary with the trial court whether to commit a defendant acquitted by reason of insanity to a mental institution.[7] In 1955, Congress enacted the present statute making hospitalization mandatory in every case in the District of Columbia where a defendant is so acquitted.[8] See 24 D.C. Code § 301(d).

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[7] 24 D.C. Code § 301 (1950) provided as follows: "If an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Department of Health, Education and Welfare, who may order such person to be confined in the hospital for the insane". See also *Durham* v. *United States*, 94 U.S. App. D.C. 228, 214 F.2d 862 (1954).

While it was customary for persons found not guilty by reason of insanity to be committed as a matter of routine, it was at least theoretically possible for them to be set totally free. See Committee on Mental Disorder as a Criminal Defense, Report to Counsel on Law Enforcement of the District of Columbia in S. Rep. No. 1170, 84th Cong., 1st Session, 5 at 12, 13.

[8] Several commentators connect *Durham* I directly with the passage of the more stringent provisions in the new Section 301. See for example Abe Krash, "The Durham Rule and Judicial Administration of the Insanity Defense in the District of Columbia", 70 Yale Law Journal 905 (1961), where the author says, "Apprehension that *Durham* would result in a flood of acquittals by reason of insanity and fear that these defendants would be immediately set loose led to agitation for remedial legislation". This concern is aptly expressed in the report of the Council on Law Enforcement of the District of Columbia of April 25, 1955, which states, "when all of the foregoing cases and statutory provisions are considered and weighed together, a serious and dangerous imbalance results in favor of the accused and against the public."

Subsection (e) provides that the court on recommendation of the superintendent of the hospital may order conditional release of the patient under supervision subject to such conditions as the court may impose. In describing this provision, the House Report noted, "These changes are designed to protect the public against premature release of insane accused persons and also to give maximum protection and treatment to such accused persons." House of Representatives Report No. 892, accompanying H.R. 6585, 84th Congress, 1st Session, submitted to the House on June 22, 1955, at 4. Conceived in a period of concern for public safety (see footnote 8, *supra*), the justification for the proposed release of patients who have not yet recovered their sanity and are still dangerous to themselves and others was found in the degree to which strict control of their actions would be imposed by the court and enforced by the hospital. *Ibid.*

This Court has twice noted the importance of the court's imposing conditions of supervision in the effectuation of conditional releases which will protect both the patient and the community from danger. In *Issac* v. *United States*, 109 U.S. App. D.C. 34, 38, 284 F.2d 168, 172 (1960), this Court stated that "if the court's conclusion . . . is that the person has not recovered his sanity but that he will not in the reasonable future be dangerous to himself or to others *under the conditions approved by the court*. . .", the court may order a release on those conditions. (Emphasis added.) See also *Hough* v. *United States*, *supra*.

Appellant's contention that "a court may not revoke a conditional release merely because of a violation" (Brief for Appellant at 16) of a condition, is implicitly, if not directly, refuted by the following recitation in *Darnell* v. *Cameron*, 121 U.S. App. D.C. 58, 60 n. 5, 349 F.2d 203, 205 n. 5 (1965):

> "Appellant argues that since the conditional release required only that he report to the hospital for periodic examinations, the sole ground for revoca-

> tion could be failure to observe this condition. But we think the conditional release order reasonably implied the possibility of revocation on other grounds."

The clear and unmistakable inference to be drawn is that the *sole* ground for revocation of a conditional release may be a violation of its conditions.

This judicially imposed and hospital effected supervision is the *sine qua non* of the conditional release, which alone mitigates the dangerous proclivities this still mentally ill patient would ordinarily manifest. Such supervisory conditions can be imposed *solely* for this purpose; where a patient has recovered to the point that there exists no reasonable doubt as to his dangerousness because of his mental condition, he is entitled to his unconditional release. *Ragsdale* v. *Overholser*, 108 U.S. App. D.C. 308, 312, 281 F.2d 943, 947 (1960).[9]

Faced with a patient whose abnormal mental condition renders him potentially dangerous, a court under the present scheme has two alternatives. It may deny unconditional release and recommit the patient to the custody of the hospital, or under the terms of Section 301(e) with the recommendation of the superintendent of the hospital, the court may release the patient on such conditions and under such supervision as will make him non-dangerous. The logic of this scheme requires the inference that where a mentally ill person so released substantially violates conditions set up solely and precisely to protect him and society, he has become a danger to himself and to the community such that a court is authorized to revoke his conditional release.

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[9] Such dangerousness need not be physical violence. It is enough if there is competent evidence that the patient may commit any crime. *Overholser* v. *Russell*, 108 U.S. App. D.C. 400, 403, 283 F.2d 195, 198 (1960). This Court there indicated that a prognosis that an individual might engage in forgeries if released justified his continued commitment.

This exacting test of non-dangerousness militates against easy release and is another indication of the stringent manner in which Section 301 has been applied. See *United States* v. *Charnizon*, *supra*.

The case at bar clearly demonstrates the adequacy of this analysis. Appellant was committed to Saint Elizabeths Hospital in 1957 pursuant to Section 301(d) after having been found not guilty by reason of insanity of charges of robbery and assault with a dangerous weapon.[10] Appellant has on three previous occasions been granted a conditional release. His first was revoked on grounds of severe intoxication, his second conditional release was revoked solely on grounds of elopement, and his third because of intoxication and elopement. Appellant's fourth conditional release, which permitted him to live and work at Camp Springs, Maryland, was amended at a hearing on October 28, 1966. By the terms of his amended release, appellant was to be permitted to hold employment outside the hospital; however, he would have to live at the hospital, returning there after each working day and remaining there on week ends. Appellant persisted in flouting the terms of this arrangement, repeatedly making himself unavailable to the supervisory control both the hospital and court thought so vital. On November 11, he failed to return from work and eloped for four days. Elopements of shorter duration followed on December 28, January 1, and January 10. (Tr. 27, 28) There was substantial undisputed testimony from qualified psychiatrists that appellant suffered from a sociopathic personality and alcoholism and that in view of his past history of assaultiveness, his unsupervised absence from the hospital constituted a danger to himself and to the community. (Tr. 25, 30, 34)

Faced with appellant's persistent failure to abide by the supervisory scheme designed to make safe his presence in the community, the court below had no choice but to revoke appellant's conditional release. Its stated reason for revocation, namely that appellant had failed to abide by the terms of his amended conditional release,

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[10] Inherent in a verdict of not guilty by reason of insanity is a finding that the defendant did in fact commit the criminal act charged. *Ragsdale* v. *Overholser, supra; Overholser* v. *O'Beirne, supra.*

was consistent with the legislative intent of Section 301(e), its interpretive development by this Court, and indeed with the internal logic of the section itself. So based, it was sufficient in and if itself to support the revocation of appellant's conditional release.

**II. Substantial evidence of appellant's dangerousness to himself and to the community while on conditional release is disclosed by the record and amply supports the lower court's decision to revoke appellant's conditional release.**

(Tr. 23, 24, 25, 30, 34, 35, 39, 42, 43, 50, 54, 55)

The record discloses ample evidence of appellant's dangerousness even while on conditional release, and further supports the lower court's decision to revoke that release. Expert medical testimony as well as testimony from appellant indicated clearly that appellant continued to suffer from a serious mental disorder which rendered him dangerous to himself and to the community.

Dr. Robertson testified that appellant suffered from a sociopathic personality disturbance and also from alcoholism. He stated that appellant was potentially dangerous in view of his past history of assaultiveness. (Tr. 23, 24, 25, 30) Dr. Owens testified that appellant suffered from a mental illness, sometimes psychoneurotic and sometimes sociopathic in nature, and that in his present condition he was a danger to himself and to others (Tr. 34, 42). Dr. Owens was emphatic in stating that appellant should not be out of touch with authority and that appellant ". . . just can't make it in the community on any type of release at this time" (Tr. 39).[11]

Indeed there was complete unanimity among the experts that appellant was presently dangerous as a result

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[11] Dr. Owens, although emphatic in his statements that appellant presently constituted a danger to himself and others even under a conditional release scheme, stated that appellant was receiving intensive, individual therapy at Saint Elizabeths and that under this regimen might well be able to attain a normal adjustment to unsupervised environment (Tr. 43).

of his mental disorder. Such unanimity was more than sufficient [12] to create ". . . reasonable medical doubts or reasonable judicial doubts . . . to be resolved in favor of the public and in favor of the patient's safety." *Ragsdale* v. *Overholser*, *supra* at 312, 281 F.2d at 947.

Appellant's own testimony gave further indication of his dangerousness. He admitted that he was "stone drunk" when returned to the hospital on August 19, 1966 and that on that night he had cut his wrists (Tr. 50, 55). He indicated that he had always had trouble with alcohol (Tr. 54).[13]

Appellant's contention that "the trial court erred in revoking a conditional release without considering whether the person [appellant] granted such release would be a danger to himself unless his release was revoked" (Br. at 17) is clearly refuted by the record. Judge Bryant noted explicitly ". . . there must be some testimony here to the effect that even under the terms of the amended release order, even under those terms, those restrictive terms, that there is some indication that he [appellant] would be a danger to the community" (Tr. 35). Judge Bryant's continued efforts of eliciting from medical witnesses and appellant himself a clarification of appellant's manifestations of alcoholism and violence under the restrictive conditions placed on appellant's environment show further the trial court's cognizance of that issue.

With this factor in mind and faced with substantial evidence of appellant's dangerous proclivities and inability to conform to the conditions prescribed under the supervisory scheme of his conditional release, the lower

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[12] This Court in *Ragsdale* v. *Overholser*, 108 U.S. App. D.C. 308, 281 F.2d 943 (1960) recognized the value of undisputed expert testimony in creating reasonable doubt, applying the standards developed in *Douglas* v. *United States*, 99 U.S. App. D.C. 232, 239 F.2d 52 (1956) to Section 301 determinations.

[13] Appellant's first and third conditional releases were revoked on the basis of incidents stemming from intoxication.

court properly viewed such evidence as further support of its decision to revoke appellant's conditional release.

Appellant next falls back on the argument that even if such evidence of dangerousness was adduced, the court failed to make explicit this finding in its written order.[14]

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[14] The court's order of revocation of February 17, 1967 appears below as does the order of October 28, 1966 amending the original conditional release. Order of *2-17-67 revoking conditional release:*

> "It appearing to the Court that on August 12, 1966, the defendant, Francis W. Friend, was granted a conditional release pursuant to the provisions of Title 24, Section 301(e), of the District of Columbia Code, and it appearing that on October 28, 1966, the terms of that release were amended by this Court, and it further appearing that he has failed to comply with the terms of the above-mentioned conditional release, as amended, it is by the Court this 17th day of February, 1967 ORDERED that his conditional release be revoked and that he be recommitted to Saint Elizabeths Hospital for further treatment and care pursuant to the provisions of Title 24, Section 301(d), District of Columbia Code."

Order of *10-28-66 Amending terms of conditional release:*

> "Upon the consideration of the motion to revoke the conditional release of the defendant filed herein by the United States of America and it appearing to the Court that the said release was granted to the defendant on August 12, 1966 under certain specified conditions and that certain of these conditions were violated but that the evidence adduced at the hearing does not justify or warrant a revocation of the said conditional release, but an amendment of the terms thereof, it is by the Court this 28th day of October, 1966
>
> ORDERED that the motion to revoke the conditional release which was granted to the defendant Francis W. Friend on August 12, 1966 be and the same is hereby denied.
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> It is FURTHER ORDERED that the terms of the aforesaid conditional release are amended as follows:
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> 1. That the defendant shall live on the grounds of St. Elizabeths Hospital.
> 2. That the defendant shall be permitted to leave the grounds of St. Elizabeths Hospital to seek employment in accordance with a schedule as approved by his physician in charge, and if employment is found, that he return to the hospital each day at the conclusion of his employment;
> 3. That the defendant shall not be permitted to leave the

Appellee reiterates its initial position that the lower court's finding that appellant violated the conditions of his conditional release of necessity involved the conclusion that he was a danger to himself and to the community. (*Supra* at Point I.)

Appellee further contends that the lower court's order of February 17 clearly met the necessary procedural requirements of a Section 301(e) determination. It has never been the case that an extensive written statement of findings was required of the District Court where conditional release is revoked. Thus, this Court in *Durham* v. *United States*, 113 U.S. App. D.C. 377, 308 F.2d 332 (1962) (referred to as Durham II), sustained the District Court's denial of a conditional release where that court made no statement of findings.[15] The record was held adequate to allow a determination that the District Court did not abuse its discretion in denying that release.

Appellant's use of *Hough* v. *United States*, 106 U.S. App. D.C. 192, 271 F.2d 458 (1959) to bolster his contention that a fuller statement of findings is necessary is inapposite. In *Hough*, it was unclear from the lower court's extensive written and oral opinions whether in denying a conditional release, it had applied the standards for a conditional release and not an unconditional release. Given that ambiguity, this Court reversed and remanded to allow the lower court to consider the case in light of the then newly announced standards for the grant of conditional release. In no way did that case hold, as

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grounds of St. Elizabeths Hospital on weekends except if he is employed;

4. And that he keep the physician in charge informed of his place and address of employment;

AND IT IS FURTHER ORDERED that the terms of this release may be augmented or amended or that an unconditional release may be moved for by the United States Government at such time as further psychiatric reports may so warrant."

[15] This Court did indicate by way of footnote that in the event of a subsequent hearing, findings should be made. *Durham* v. *United States*, *supra* at 311 p. 1, 308 F.2d at 332 n. 1.

appellant intimates, that extensive statements of findings are always required of the District Court. The subsequent *Durham* II decision indicates that such findings are not necessarily required. Further, it is clear from the record in this case (Tr. 35) that the trial judge properly applied the standards set forth in *Hough*.

Appellee submits that the record of the instant case, as well as the lower court's findings in its order, amply support its decision to revoke appellant's conditional release.

## CONCLUSION

WHEREFORE, it is respectfully submitted that the order of the District Court revoking appellant's conditional release from the hospital should be affirmed.

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